

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

JOHNNY ALVAREZ, ON BEHALF OF
HIMSELF AND ALL OTHERS
SIMILARLY SITUATED,
Plaintiff

v.
MG BUILDING MATERIALS, LTD,
Defendants

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Case No. 5:24-CV-400

**DEFENDANT'S RESPONSE TO PLAINTIFF'S
MOTION FOR DEFAULT JUDGMENT**

Defendant MG Building Materials, LTD files this Response to Plaintiff's Motion for Default Judgment and shows the following:

1. Defendant, at all times, acted in good faith to comply with the FLSA and with reasonable grounds to believe that their actions did not violate the FLSA, and Defendant asserts a lack of willfulness or intent to violate the FLSA. As such, Plaintiff may not recover liquidated damages and may not rely upon the three-year statute of limitations.

2. Defendant requests that the Court deny the Motion for Default Judgment.

3. Defendant's failure to answer this lawsuit was not intentional. Defendant did not learn of this lawsuit until it was served with the Motion for Default Judgment at its corporate headquarters located at 2651 SW Military Drive, San Antonio, Texas 78224. Previously, Plaintiff had attempted to serve Defendant through its registered agent, Kevin Sullivan, at 3512 Paesanos Parkway, Suite 202, San Antonio, Texas 78231. However, this is an old address, and Defendant's registered agent no longer occupies this address. Instead, the registered agent is located at 3619

Paesanos Parkway, Suite 312, San Antonio, Texas 78231. This change of address occurred around 2018.

4. Presumably this is why Defendant's registered agent never received the lawsuit and summons. Defendant has now realized as a result of reviewing the Motion for Default Judgment that the paperwork on file with the Texas Secretary State incorrectly references the obsolete address. This was, as best the Company can determine, a typographical error that was perpetuated in annual filings over the last several years. Defendant is now in the process of correcting this error. Defendant apologizes for this error.

5. Defendant has valid defenses to Plaintiff's claim and desires to defend the lawsuit. Defendant did not unlawfully "shave" time from Plaintiff's time as alleged in the lawsuit. Plaintiff's time records were adjusted only when he failed to clock in or out, and then only to accurately reflect the hours actually worked.

6. Defendant has today filed its Answer and Affirmative Defenses.

7. Accordingly, Defendant prays that the Court refrain from entering default judgment and allow Defendant to defend this case.

Dated this the 5th day of September 2024.

Respectfully submitted,

/s/ MICHAEL V. GALO, JR.

Michael V. Galo, Jr.

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ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document has been served electronically on counsel of record on this 5th day of September 2024, as follows:

Mr, Douglas Welmaker
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via Electronic Filing System

/s/ Michael V. Galo, Jr.

Michael V. Galo, Jr